

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**CARMEN MICHELE  
VALGUARNERA,**

**Plaintiff,**

**1:11-cv-1330  
(GLS)**

**v.**

**MICHAEL J. ASTRUE,  
Commissioner of Social  
Security,**

**Defendant.**

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**APPEARANCES:**

**OF COUNSEL:**

**FOR THE PLAINTIFF:**

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**FOR THE DEFENDANT:**

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**Gary L. Sharpe  
Chief Judge**

**MEMORANDUM-DECISION AND ORDER**

## **I. Introduction**

Plaintiff Carmen Michele Valguarnera challenges the Commissioner of Social Security's denial of her claim for Disability Insurance Benefits (DIB), seeking judicial review under 42 U.S.C. § 405(g). (See Compl., Dkt. No. 1.) After reviewing the administrative record and carefully considering Valguarnera's arguments, the court reverses and remands the Commissioner's decision.

## **II. Background**

On December 29, 2006, Valgaurnera filed an application for DIB under the Social Security Act ("the Act"), alleging disability since June 30, 2006. (See Tr.<sup>1</sup> at 144-50.) After her application was denied, (see *id.* at 89-96), Valgaurnera requested a hearing before an Administrative Law Judge (ALJ), which was held on February 20, 2009, (see *id.* at 43-69, 97-98). On April 2, 2009, the ALJ issued a decision denying the requested benefits. (See *id.* at 71-81.) Upon review by the Social Security Administration Appeals Council, the matter was remanded to the ALJ with specific instructions for his consideration. (See *id.* at 82-85.) A second

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<sup>1</sup> Page references preceded by "Tr." are to the Administrative Transcript. (See Dkt. No. 9.)

hearing was conducted before the ALJ on February 4, 2011, and another unfavorable decision followed on March 24, 2011. (See *id.* at 12-26, 27-42.) That decision became the Commissioner's final determination upon the Appeals Council's denial of review. (See *id.* at 1-6.)

Valgaurnera commenced the present action by filing her Complaint on November 9, 2011 wherein she sought review of the Commissioner's determination. (See *generally* Compl.) The Commissioner filed an answer and a certified copy of the administrative transcript. (See Dkt. Nos. 8, 9.) Each party, seeking judgment on the pleadings, filed a brief. (See Dkt. Nos. 17, 20.)

### **III. Contentions**

Valgaurnera contends that the Commissioner's decision is tainted by legal error and is not supported by substantial evidence. (See Dkt. No. 17 at 16-26.) Specifically, Valgaurnera claims that: (1) “[t]he ALJ failed to combine the effects of [her] impairments;” (2) her depression was not combined with her other impairments, and the ALJ misapplied relevant case law and regulations regarding her depression; (3) the ALJ erred by not completing a function by function assessment; (4) “[t]he ALJ failed to obtain evidence from a [m]edical [a]dvisor to determine whether [her]

impairments at least equaled the Listings of Impairments"; (5) her credibility was improperly evaluated; and (6) the ALJ wrongly evaluated her ability to perform past work. (See *id.*) The Commissioner counters that the appropriate legal standards were used by the ALJ and his decision is supported by substantial evidence. (See Dkt. No. 20 at 4-12.)

#### **IV. Facts**

The court adopts the parties' undisputed factual recitations. (See Dkt. No. 17 at 1-14; Dkt. No. 20 at 1.)

#### **V. Standard of Review**

The standard for reviewing the Commissioner's final decision under 42 U.S.C. § 405(g) is well established and will not be repeated here. For a full discussion of the standard and the five-step process used by the Commissioner in evaluating whether a claimant is disabled under the Act, the court refers the parties to its previous opinion in *Christiana v. Comm'r of Soc. Sec. Admin.*, No. 1:05-CV-932, 2008 WL 759076, at \*1-3 (N.D.N.Y. Mar. 19, 2008).

#### **VI. Discussion**

Among several other arguments, Valguarnera first asserts that the ALJ failed to consider or evaluate the combined effects of all of her

impairments, including those that are not severe. (See Dkt. No. 17 at 16-18.) In particular, Valguarnera contends that the ALJ overlooked several diagnosed ailments—namely, Chiari I malformation, trigger finger, and neural foraminal stenosis at C6/7—and did not consider them at any point during the sequential evaluation process. (See *id.* at 17-18.) The Commissioner argues in opposition that, because none of the impairments that the ALJ failed to discuss caused demonstrable symptoms or “functional limitations severe enough to preclude . . . substantial gainful activity,” he did not commit error. (Dkt. No. 20 at 8.) The court agrees with Valguarnera that remand is necessary.

At step two, the ALJ must “determine whether the claimant has a severe impairment.” *Christiana*, 2008 WL 759076, at \*3; see 20 C.F.R. § 404.1520(a)(4)(ii), (c). The omission of an impairment at step two may be deemed harmless error, particularly where the disability analysis continues and the ALJ later considers the impairment in his residual functional capacity determination. See *Tryon v. Astrue*, No. 5:10-CV-537, 2012 WL 398952, at \*4 (N.D.N.Y. Feb. 7, 2012); see also *Plante v. Astrue*, No. 2:11-CV-77, 2011 WL 6180049, at \*4 (D. Vt. Dec. 13, 2011).

Here, it is not clear if the ALJ was even aware that Valguarnera had

been diagnosed with the aforementioned impairments, (see, e.g., Tr. at 294, 328, 350, 393),<sup>2</sup> as his decision is devoid of any mention of them, (see *id.* at 15-22). It is also noteworthy that each of the undiscussed impairments could contribute to some of the symptoms complained of by Valguarnera. (See *id.* at 33, 53, 55.) In particular, Chiari I malformation is capable of producing neurological deficits, including muscle weakness;<sup>3</sup> trigger finger may cause issues with dexterity;<sup>4</sup> and neural foraminal stenosis can cause pain, tingling, and weakness.<sup>5</sup> Because the ALJ failed, at any step of the sequential evaluation process, to address the foregoing impairments and whether they are singularly or in combination disabling, remand is

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<sup>2</sup> While not raised by Valguarnera, the court notes that Dr. Lydia Shajenko also identified likely carpal tunnel syndrome, which resulted in hand numbness. (See Tr. at 327-28.)

<sup>3</sup> See *Chiari Malformation Information Page*, National Institute of Neurological Disorders and Stroke, <http://www.ninds.nih.gov/disorders/chiari/chiari.htm> (last visited Nov. 1, 2012).

<sup>4</sup> See *Trigger Finger*, MayoClinic.com, <http://www.mayoclinic.com/health/trigger-finger/DS00155> (last visited Nov. 1, 2012).

<sup>5</sup> Jamie Herndon, *What is Neural Foraminal Stenosis?*, LIVESTRONG.COM, <http://www.livestrong.com/article/45337-neural-foraminal-stenosis> (last visited Nov. 1, 2012).

necessary. See *Jones v. Astrue*, No. 5:11-cv-372, 2012 WL 2206384, at \*2 (N.D.N.Y. June 14, 2012). Finally, because Valguarnera's remaining contentions relate to purported errors at later stages of the sequential analysis, the court need not address them. See *Christiana*, 2008 WL 759076, at \*3.

## **VII. Conclusion**

**WHEREFORE**, for the foregoing reasons, it is hereby  
**ORDERED** that the decision of the Commissioner is **REVERSED** and  
**REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) for  
proceedings consistent with this Memorandum-Decision and Order; and it  
is further

**ORDERED** that the Clerk close this case and provide a copy of this  
Memorandum-Decision and Order to the parties.

**IT IS SO ORDERED.**

November 28, 2012  
Albany, New York



Gary L. Sharpe  
Gary L. Sharpe  
Chief Judge  
U.S. District Court